

Nelson Electric, Gary C. Nelson, Inc., and Gary C. Nelson Electric and International Brotherhood of Electrical Workers, Local Union No. 669, AFL-CIO. Case 8-CA-11183

February 8, 1982

### SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND JENKINS

On March 28, 1979, the National Labor Relations Board issued its Decision and Order<sup>1</sup> in the above-entitled proceeding in which it adopted the findings and conclusions of the Administrative Law Judge and required, *inter alia*, that Respondent make whole certain employees for their losses resulting from Respondent's unfair labor practices in violation of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended. On January 27, 1981, the United States Court of Appeals for the Sixth Circuit entered its judgment<sup>2</sup> enforcing in full the Board's Order, including its backpay provisions. A controversy having arisen over the amount of backpay due under the terms of the Order, as enforced by the court, the Acting Regional Director for Region 8, on May 29, 1981, issued a backpay specification and notice of hearing alleging the amounts of backpay due under the Board's Order and notifying Respondent that it should file a timely answer complying with the National Labor Relations Board Rules and Regulations, Series 8, as amended. To effect service on Respondent, the backpay specification and notice of hearing was sent by certified mail to Respondent's address and a copy of the same was sent by regular mail to Respondent's counsel. Respondent failed to submit an answer or respond in any way to the backpay specification.

On November 6, 1981, counsel for the General Counsel filed directly with the Board in Washington, D.C., a Motion for Summary Judgment, with exhibits attached. Subsequently, on November 17, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

#### Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides, in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto . . . .

(b) . . . The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. . . .

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

The backpay specification, issued and served on Respondent on May 29, 1981, specifically states that Respondent shall, within 15 days from the date of the specification, file an answer to the specification with the Regional Director for Region 8, and that if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them.

According to the response to the Notice To Show Cause, Respondent contends that it has filed petitions for bankruptcy and that the Board should stay the present proceeding. We find Respondent's contention without merit. Proceedings in bankruptcy of a respondent in an unfair labor practice proceeding do not deprive the Board of jurisdiction or authority to entertain and process the unfair labor practice case to its final disposition. Accordingly,

<sup>1</sup> 241 NLRB 545

<sup>2</sup> 638 F.2d 965.

there is no requirement that the present proceeding be stayed.<sup>3</sup>

Respondent's motion to stay our proceedings does not specifically deny or respond in any way to the allegations of the backpay specification as required by Section 102.54(b) of the Board's Rules and Regulations; it does not explain Respondent's failure to file a timely answer. The allegations of the backpay specification are therefore deemed admitted as true and the Board so finds.

Accordingly, on the basis of the allegations of the specification, which are accepted as true, the Board finds the facts as set forth therein, concludes that the net backpay due each of the employees and the relevant fringe benefit funds is as stated in the computations of the specification, and orders that payment thereof be made by Respondent as set forth below.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Nelson Electric, Gary C. Nelson, Inc., and Gary C. Nelson Electric, Mechanicsburg, Ohio, its officers, agents, successors, and assigns, shall:

<sup>3</sup> See *Ralph Schaffner, an Individual d/b/a Schaffner Construction Co.*, 252 NLRB 967 (1980), and cases cited therein. See also Sec. 15 of the National Labor Relations Act, as amended.

1. Make whole each of the employees named below by payment to them of the amounts set forth adjacent to their names, plus interest computed in the manner described in *Florida Steel Corporation*, 231 NLRB 651 (1977) (see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962)), and accrued to the date of payment, minus tax withholdings required by Federal and state laws:

William Flaher	\$18,482.80
Mike Durden	2,262.80
Mike Rigsby	1,432.80
Dan Wilt	21,110.40
Tom McClosky	10,389.20
Tim Payton	5,919.60
George Mendenhall	1,820.00
Jay E. Cost	1,351.14
Jerry A. Cost	171.20

2. Make whole the employees named above by payment on their behalf of contributions into the fringe benefit funds named below in the amounts set forth adjacent to the specified funds, plus any additional amounts (see *Merryweather Optical Company*, 240 NLRB 1213 (1979)):

Pension Plan	\$16,438.00
National Electrical Benefit Fund	4,535.10
Joint Apprentice and Training Fund	806.40